

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

9 JERRY FLAGG, )  
10 Plaintiff, ) CV 06-0930 SBA  
11 v. ) ORDER  
12 MICHAEL J. ASTRUE, ) GRANTING DEFENDANT'S CROSS-  
13 Commissioner of Social ) MOTION FOR SUMMARY JUDGMENT  
14 Security, )  
15 Defendant. )

16        This case is before the Court on Cross-Motions for Summary  
17 Judgment. Based on the pleadings, transcript, and argument  
18 submitted, Defendant's Cross-Motion For Summary Judgment is  
19 hereby GRANTED, and Plaintiff's Motion For Summary Judgment is  
20 DENIED.

21 The Court finds that the ALJ properly applied administrative  
22 res judicata in this case. Plaintiff has failed to overcome the  
23 presumption of non-disability, and is thus not entitled to  
24 benefits based upon his current application. See *Chavez v.*  
25 *Bowen*, 844 F.2d 691, 693 (9th Cir. 1988).

26       Further, the Court rejects Plaintiff's argument that a  
27 revision of the musculoskeletal listings constitutes a change in  
28 the law that bars the application of administrative res judicata.  
Even assuming Plaintiff were correct in arguing that a revision

1 of Listing 1.02 constitutes a change in the law, he has failed to  
2 show how he meets this listing under either the prior or revised  
3 version. *See Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.  
4 1999) ("The burden of proof is on the claimant as to steps one to  
5 four"). Accordingly, the Court hereby affirms the final decision  
6 of the Commissioner of Social Security and GRANTS Defendant's  
7 Motion for Summary Judgment.

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9 **IT IS SO ORDERED:**

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SAUNDRA B. ARMSTRONG  
United States Magistrate Judge

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DATED: 8/13/07

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